

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXASBY CR
DEPUTY

SCOTT PHILLIP LEWIS,
PLAINTIFF,

V.

WILLIAMSON COUNTY, TEXAS,
DEFENDANT.

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CAUSE NO. 1:21-CV-74-LY

ORDER ON REPORT AND RECOMMENDATION

Before the court in the above-referenced cause are Defendant Williamson County, Texas's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. #71) and all responses and replies, which were referred to a United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72; Loc. R. W.D. Tex. App'x C, R. 1(d). The magistrate judge rendered a Report and Recommendation on December 20, 2022 (Doc. #78), recommending that grant in part and deny in part the motion to dismiss.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

Plaintiff *Pro Se* Scott Phillip Lewis filed objections to the Report and Recommendation on January 3, 2023 (Doc. #80). Williamson County filed objections on January 10, 2023 (Doc. #84). In light of the objections, the court will undertake a *de novo* review of the record and applicable law in this case.

Williamson County objects to the magistrate judge's recommendation to deny the motion with respect to Lewis's claims under the Texas Tort Claims Act. Williamson County argues that the negligence claim that Lewis alleges in the second amended complaint does not relate back to the original complaint and is thus barred by the two-year statute of limitations governing claims under the Texas Tort Claims Act. The court agrees with the magistrate judge's analysis and will overrule Williamson County's objections.

Lewis also objects to the magistrate judge's Report and Recommendation, proffering to the court additional facts and various arguments related to the claims that the magistrate judge recommends be dismissed with prejudice. Having reviewed the objections and entire case file, the court will overrule Lewis's objections and accept and adopt the magistrate judge's Report and Recommendation for substantially the reasons stated therein.

IT IS THEREFORE ORDERED that Plaintiff *Pro Se* Scott Phillip Lewis's objections to the Report and Recommendation (Doc. #80) and Defendant Williamson County, Texas's objections to the Report and Recommendation (Doc. #84) are **OVERRULED**.

IT IS FURTHER ORDERED that the United States Magistrate Judge's Report and Recommendation (Doc. #78) filed in this cause is **APPROVED** and **ACCEPTED** by the court.

IT IS FURTHER ORDERED that Defendant Williamson County, Texas's Motion to Dismiss Plaintiff's Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. #71) is **GRANTED IN PART AND DENIED IN PART** as follows: the motion

to dismiss is **DENIED** with respect to Lewis's excessive-force and Texas Tort Claims Act claims. The motion is **GRANTED** with respect to Lewis's remaining claims, and such claims are **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that any remaining request by Plaintiff *Pro Se* Scott Phillip Lewis to amend the complaint is **DENIED**. Lewis's excessive-force claim and negligence claim under the Texas Tort Claims Act remain pending before the court.

SIGNED this 26th day of March, 2023.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE